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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:


Inventor(s) : Jaime Siegel
Filed : 10/18/2000
Serial No. : 09/691,409
Confirmation No. : 3951
Group Art Unit : 2876
Examiner : Kim, Ahshik
Docket Number : SNY-N3422
Title : Portable Music Player with Pay Per Play Usage and Method
of Purchase of Credits for Usage

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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Alexandria, VA 22313-1450

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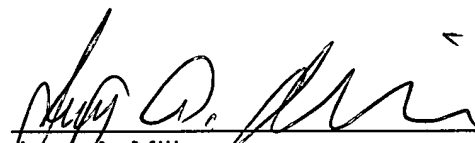
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Serial No. 09/691,409

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Respectfully submitted,


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JERRY A. MILLER Reg. No. 30,779
(Applicant, Assignee or Reg. Representative)

Signature

Date

APPEAL BRIEF

This appeal brief is submitted in **triplicate** in response to the Final Office Action dated July 9, 2003, a fourth Office Action in this application. Reconsideration and allowance of all claims at issue are respectfully requested.

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Serial No. 09/691,409

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REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee(s) of this application - Sony Corporation and Sony Electronics, Inc.

RELATED APPEALS AND INTERFERENCES

None known to the undersigned.

STATUS OF CLAIMS

All claims (1-45) stand rejected. All claims are as originally filed except for minor amendments to remove a trademark term as required by the Examiner.

Claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are rejected under 35 U.S.C. §103(a) as unpatentable over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).

Claims 9, 11, 22, 29, 42 and 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).

STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No amendments have been filed subsequent to the Final Rejection.

SUMMARY OF INVENTION

The following summary is supplied in compliance with the requirements of 37 C.F.R §1.192. The undersigned wishes to note that this summary is provided due to the requirements of the above rule and is intended merely as an aid to the Board in rapidly

understanding certain embodiments consistent with the invention and the issues relating to this appeal. As such, this summary should not be construed to define or limit the invention in any way.

With reference to **FIGURE 1**, this invention relates, in certain embodiments, to a music player 100 which uses recorded media (e.g., 112) that is playable in a pay per play format and to a method for a user to purchase playback credits for use of the music on the player 100. When a user plays the content, playback credits are deducted from a playback credit bank 156. Upon use of all of the available credits, the user is unable to continue to play the content.

Player 100 includes, in this embodiment, a media player 106 which can be any suitable media player including a disc drive, tape drive, flash memory card or Memory Stick™ (Sony Corporation, Tokyo, Japan) reader. In this example, a Memory Stick™ 112 is shown as the content bearing medium which contains, for example, digital formatted music program material. Media player 106 includes all of the conventional circuitry used to effect playback of the program material in the media 112 and reproduction thereof over the headphones 120.

Player 100 also may include a media reader such as a swipe card reader 128 suitable for reading from and writing to a card similar to a credit card or smart card 134 via a magnetic stripe 136 or other interface. In this embodiment, the smart card 134 is programmed with a number of encrypted playback credits which are purchased by the user, for example, by mail, Internet, kiosk or other retail outlets. In this embodiment, the smart card may be purchased with playback credits, e.g. 100 playback credits. When the user purchases the playback credits on the smart card 134, he or she swipes the card through swipe card reader 128 to read the content of the smart card 134, decrypt the content in a processor 144 having a decryption engine, deleting or deducting the playback credits from the smart card 134 and storing those playback credits internally in the player 100's playback credit bank 156. Thus, in this example, after swiping the smart card 134 through the swipe card reader 128, the

playback credit bank 156 is credited with the 100 playback credits previously stored thereon, so that the playback credit bank 156 now has 100 playback credits plus any playback credits already stored in the playback credit bank 156.

In other embodiments, the playback credit bank 156 can be replenished from any number of sources. For example, the same player which plays content may be employed to read the playback credits from playback credit bearing media instead of, or in addition to, content that might or might not be stored on the playback credit media. In other embodiments, the player 100 could be directly interfaced to either a point of sale terminal such as a kiosk or a computer connected to the Internet or to a wireless communication mechanism so that the playback credit bank can be directly replenished.

In operation, once the playback credits are stored in the playback credit bank 156 and content bearing media 112 is accessed by the media player 106, the processor 144 checks the playback credit bank 156 prior to enabling playback of the media's content. If playback credits are available, one is deducted or disabled and playback is permitted. In one embodiment, the playback credit is deducted at approximately the time when playback begins. In other embodiments, the playback credit can be deducted only after, for example, ten seconds or 30 seconds of playback have been provided (e.g as a free preview). In some embodiments, a mechanism such as display 160 is provided and the programming generates a reminder as to the status of the playback credit bank 156 or otherwise provides a reminder to the user to renew playback credits. This can be accomplished, for example, by providing a visual or audible message to the user indicating the number of playback credits remaining and/or a need to obtain new playback credits.

In another embodiment, the content bearing media 112 can also serve as the storage mechanism for the playback credit bank. In this embodiment, the content and playback credits are associated with the media rather than the player 100 permitting the media to be used for its available playback credits in any suitable player 100 including multiple such players.

One non-limiting reading of claim 1 on **FIGURE 1**, presented by way of example for the convenience of the Board, is as follows:

A content player 100, comprising in combination:

- a memory 112 which stores content;
- a playback credit bank 156 stored in the content player 100;
- a playback circuit 106 which plays the content for consumption by a user, providing the credit bank 156 contains at least one playback credit; and
- a processor 144 which deducts a playback credit from the playback credit bank 156 when the content is played.

ISSUES ON APPEAL

1. Whether or not claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are patentable under 35 U.S.C. §103(a) over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).
 - a. Whether or not Kleiman has a playback credit bank within the meaning of Appellant's Application and whether or not Kleiman deducts a playback credit when content is played.
 - b. Has the Examiner admitted that Kleiman does not in fact have a playback credit bank within the meaning of Appellant's Application.
 - c. Does Liu supply the missing playback credit bank within the meaning of Appellant's application.
 - d. Whether or not Kleiman is properly combinable with Liu in support of an obviousness rejection since making such a combination defeats the intended function of either Kleiman or Liu.
 - e. Whether or not the Examiner has met the burden of establishing that there is a suggestion in the art to properly combine Kleiman with Liu in support of an obviousness rejection.

2. Whether or not claims 9, 11, 22, 29, 42 and 44 are unpatentable under 35 U.S.C. §103(a) over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).

GROUPING OF CLAIMS

Appellant considers the following groups of claims separately patentable, and these groups stand or fall as groups:

Group A - Claims 1, 5-8, 10, 12-14, 17-21, 25-28, 32 and 33.

Group B - Claims 2, 3, 15, 16, 23, 24, 30, 31, 35 and 36.

Group C - Claims 4 and 37.

Group D - Claims 34, 37-41, 43 and 45.

Group E - Claims 9, 11, 22, 29, 42 and 44.

ARGUMENTS

1. **Claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are patentable over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).**

- a. Kleiman has no playback credit bank within the meaning of Appellant's Application, and Kleiman does not deduct a playback credit when content is played.

The Office Action dated 10/24/2002 asserted (page 2, last paragraph) that Kleiman has a playback credit bank 212. This assertion is repeated in the Office Action dated 2/4/2003 (page 2, last paragraph) as well as the current Office Action (page 2, last paragraph).

The response filed on 1/16/2003 explained (pages 2 through 4) using extensive quotes from the Kleiman's specification that Kleiman's monetary credits are deducted in order to decrypt and re-encrypt Kleiman's VET (Virtual Electronic Title) envelopes. In contrast, Appellant's playback credit bank deducts a playback credit when content is played. Accordingly, there is no disclosure in Kleiman that teaches or suggests a playback credit bank within the meaning of Appellant's application. MPEP 2141.02 requires that the invention as a whole must be properly considered in order to establish *prima facie* obviousness. Such an inquiry requires proper consideration of all elements of the claims as required by MPEP 2142.03.

- b. The Examiner has admitted that Kleiman does not in fact have a playback credit bank within the meaning of Appellant's Application.

In the Office Action dated 2/14/2003 (page 3, third paragraph), the Examiner states:

"Kleiman fails to specifically teach or fairly suggest of charging a customer when the electronic content is repeatedly played."

In the same Office Action (page 5, section 4), the Examiner states:

"the Applicant provided distinction between VET and VET envelope as disclosed in the reference to Kleiman ... Applicant's request for reconsideration based on reasons in remarks section is persuasive. In light of Applicant's reasons and interpretation of Kleiman reference, additional search was warranted."

The above statement regarding the failure of the Kleiman reference is repeated in the Office Action of 2/14/2003 (page 3, second paragraph) as well as the current Office Action (page 3, second paragraph).

Thus, it has not only been established as argued in section a. above that Kleiman has no playback credit bank and does not deduct a credit when content is

played as called for in the claims, but additionally, the Examiner admits and reiterates that this is the case. It is clearly the case that Kleiman does not meet these claim features, despite continued statements that Kleiman teaches a playback credit bank (section 2, second paragraph). It is believed that the Examiner's continued reference to Kleiman having a playback credit bank 212 is an inadvertent word processing error in view of the contradictory position argued in the later Office Actions.

- c. Liu does not supply the missing playback credit bank within the meaning of Appellant's application.

The Examiner attempts to supply the missing teaching of Kleiman using the Liu reference and states (page 3, third and fourth paragraphs):

"Liu teaches a method and system for accessing electronic content ... wherein provided authentication key expires after some period of time ... so that the customer may not be able to enjoy the content repeatedly without paying."
(emphasis added)

The Examiner further states (page 5, next to last paragraph):

"Liu reference is cited to cure the deficiency of Kleiman reference, use of credit-bank feature wherein the customer pays every time the content is played. Since Liu's key (or means enabling users to play the content) is provided with time limitation such playing key is valid only for a time or number of plays, ... it could be inferred that the users have to pay for additional plays."

It is respectfully submitted that the Examiner's analysis fails to consider the teaching at column 5, lines 33+ that one could potentially enjoy the content repeatedly within the period of time in which the authentication key is valid. While Liu does in fact disclose that *"the key may expire after a predetermined number of plays"*, Liu does not disclose that such number of plays is controlled in a playback credit bank in which a

playback credit is deducted each time the content is played. In Liu, playback is controlled by setting parameters for the expiration of a decryption key. While the effect from the user's perspective may be similar, the fact remains that neither Liu nor Kleiman disclose or suggest the mechanism used to effect the pay-per-play function of certain embodiments of Applicant's invention.

From the above, it would appear that the Examiner may have applied an impermissible "obvious to try" standard. It has long been established that one cannot base obviousness upon what a person skilled in the art might try or might find obvious to try, but rather must consider what the prior art would have led a person of ordinary skill in the art to do. (See for example, *In re Tomlinson*, 150 USPQ 623 (CCPA 1996) and *In re Goodwin*, 198 USPQ 1 (CCPA 1978)). By way of analogy, the existence of aspirin as a pain reliever may demonstrate the desirability for pain relief compounds, it in no way renders ibuprofen and codine and morphine obvious.

While it is asserted that the Liu reference cures Kleiman's deficiency, it in fact does not - Liu contains no playback credit bank within the meaning of Appellant's application. As the Examiner himself stated, the Liu reference only describes use of an authentication key that expires after a period of time or number of plays. Thus, the key has constraints that enable control of playback, but there is no playback credit bank. The claim limitations must be considered in order to make a proper case of *prima facie* obviousness.

Thus, Liu fails to teach or suggest a playback credit bank in which a playback credit is deducted when content is played within the meaning of Appellant's application. MPEP 2141.02 requires that the invention as a whole must be properly considered in order to establish *prima facie* obviousness. MPEP 2141.03 requires that such an inquiry properly consider all elements of the claims.

After a discussion of Liu (page 3, fourth paragraph), the Examiner appears to somehow invoke an assertion of official notice (without actually stating so) to support

an assertion that “*pay-per-view or pay-per-play is well known in the art and widely used in various industries.*” While only Liu is advanced as evidence to support this assertion, it remains the case neither Liu nor any assertion of official notice makes reference to the playback credit bank and operation thereof as recited in the claims. While there may be functional similarities from a user point of view, the fact remains that the Examiner has failed to establish *prima facie* obviousness for failure to properly consider each and every claim limitation in an analysis of the claims as a whole since the playback credit bank and operation thereof are neither taught nor suggested nor even asserted to be known on the basis of official notice.

- d. Kleiman is not properly combinable with Liu in support of an obviousness rejection since making such a combination defeats the intended function of either Kleiman or Liu.

As explained in the Office Action Response dated May 3, 2003 (page 2 last paragraph through page 3 last full paragraph), if Kleiman and Liu are combined as suggested by the Office Action, the undersigned is unable to resolve what the resulting structure would be, why one would make the combination and how it would function. Consider the following:

- In Kleiman, as described in column 13, the VET envelope is decrypted at the player using a VET key. The VET is encrypted using a hardware dependent key (the internal IT key). The re-encryption action triggers deducting a credit in Kleiman. In Kleiman, the hardware specific key is used to internally encrypt and decrypt the content (the VET) so that playback is only possible on a single device. Apparently, multiple playbacks are contemplated for a single credit.
- In Liu, a key is provided to a user after authentication. That key can be a one time use key, or that the key may be good for a certain number of plays

or for a certain time period. Such a key is used to decrypt the data for one song (see col. 5, lines 44-49).

Thus, while Kleiman uses hardware specific encryption to protect the content, Liu uses a downloaded key that can presumably be associated with an allowable number of plays. How then shall the two references be combined (and what suggestion is there to combine them in this way)? If Liu's encryption keys are used, it would appear that the advantage and function of Kleiman's hardware specific encryption is destroyed. If the Examiner is proposing that both encryption schemes should be used simultaneously, where is the suggestion for such redundancy, since Kleiman already has a secure encryption system?

Thus, it must be concluded that either the function of Kleiman's hardware specific encryption is destroyed by the combination, or the combination produces redundant encryption for which there is no apparent need and thus no motivation in the art to provide.

MPEP 2143.01 provides that one cannot establish prima facie obviousness if a proposed combination or modification destroys the function of one of the references being combined, or if the proposed modification changes the principles of operation of the cited reference. Accordingly, the current combination cannot be used to establish prima facie obviousness since the function of Kleiman's hardware specific encryption would be destroyed, or at best the principles of operation of Kleiman are changed.

- e. The Examiner has not met the burden of establishing that there is a suggestion in the art to properly combine Kleiman with Liu in support of an obviousness rejection, and even if such suggestion exists, the combination is inadequate to meet all claim limitations.

MPEP 2143.01 requires that the prior art suggest the desirability of the claimed invention. In view of the above, it is clear that the undersigned can find no motivation

or suggestion to make the proposed combination. The Examiner apparently justifies the combination of Kleiman with Liu by the third full paragraph of page 3 of the Office Action which states:

“Some customers may want to purchase contents temporarily, and some others buy them permanently and keep them for further enjoyment. ... Accordingly, incorporating various marketing alternative would have been obvious to one ordinary skill in the art to increase sales/revenue and expand customer base, and therefore, an obvious expedient.”

It is respectfully submitted that incorporating various marketing alternatives to increase sales/revenue and expand a customer base cannot possibly be an adequate reason for combination of references. One or more of the above is the desire of virtually every inventor, but such desires cannot possibly lead to a reason for combining references in a patentability analysis. To permit such a reasoning to stand flies in the face of MPEP 2143.01 and the underlying case law that provides the basis thereto. Again, it appears that at best the Examiner has applied an improper “obvious to try” analysis.

In the first full paragraph of page 4 of the Office Action, the Examiner further states:

“It would have been obvious to one of ordinary skill in the art to provide such a combination, as it would reduce the number of storage mediums necessary to fully operate the content player. The user could conveniently perform all operational tasks using one card ... , adding to the customer satisfaction.”

While Appellant appreciates the Examiner’s endorsement of the advantages of certain embodiments of the present invention, it is respectfully submitted that they are just that - advantages that a user might obtain with certain embodiments consistent with the invention. However, it is respectfully submitted that the fact that the Examiner

can point to advantages does not render them obvious nor provide basis for a combination of references. Such suggestion to make a combination must come from the art and not the invention. To suggest otherwise, is an improper hindsight reconstruction.

In short, the Examiner has used a hindsight analysis of advantages of certain embodiments of the invention to justify combination of references without any clear suggestion or teaching in the art to back up such a combination. (It could be argued that such advantages support a position of patentability rather than vice versa.) MPEP 2143.01 clearly requires that the suggestion or teaching come either explicitly or implicitly from the art or the knowledge of those of ordinary skill in the art. Bare allegations that the references can be combined to provide certain advantages does not meet this requirement. As stated in MPEP 2142, the Examiner bears the initial burden of factually supporting any conclusion of *prima facie* obviousness. Establishing facts that support the propriety of making the proposed combination is a necessary part of meeting such burden. Thus far, the Examiner has not met this burden.

DISCUSSION OF SPECIFIC CLAIM GROUPS:

For the above reasons stated in sections a. through e., the claims of Group A (claims 1, 5-8, 10, 18-21, 25-28, 32, 33) are believed to be clearly patentable.

Regarding Group B (claims 2, 3, 15, 16, 23, 24, 30, 31, 35, 36), each of these claims are believed independently patentable and call for a playback credit bank that is replenished with playback credits by access to a removable storage medium or by communication with a smart card. None of the cited references appear to disclose, teach or suggest this feature. While Kleinman does disclose credits that are purchased possibly through a smart card, such credits are not playback credits. Thus, for all of the reasons cited above in sections a. through e., as well as the lack of teaching of purchase of playback credits using removable storage or smart cards, these claims are independently patentable.

Regarding Group C (claims 4, 37), these claims provide for playback credits to be obtained from a kiosk. The Examiner asserts that this is equivalent to credits that are transferred in the form of certificates from service centers, and that such service centers that encompass the realm of kiosks (page 3, first paragraph). Again, Kleinman's credits are certificates and are not playback credits that are used in a playback credit bank. Thus, for all of the reasons cited in sections a. through e., as well as the lack of teaching of purchase of playback credits via a kiosk, the claims of Group C are believed independently patentable.

Regarding Group D (claims 34, 37-41, 43, 45), these claims call for the credit bank to be situated within the storage medium that also stores the content. Thus, by way of example, when a user purchases a Compact Disc, it might come with a fixed number of playback credits stored on the Compact Disc (e.g., 10 plays). If the user wishes to play the content more times, additional playback credits may be purchased for that specific content and stored with the content on the Compact Disc.

The Office Action (page 4, second paragraph) admits that the teaching of this feature is absent in Kleiman, and merely asserts that it is obvious and again cites several advantages of certain embodiments. Again, it is submitted that this represents a hindsight reconstruction and provides no showing of a motivation in the art to make the proposed combination or modification (MPEP 2143.01).

As described above, none of the cited art discloses or suggests a playback credit bank that stores playback credits. Additionally, none of the cited art situates such a playback credit bank on the medium storing the content for which the credits are applied for playback. Thus, for all of the above reasons stated in sections a. through e., as well as the claims of Group D are believed clearly patentable.

2. **Claims 9, 11, 22, 29, 42 and 44 are patentable over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).**

For all of the same reasons explained in sections a. through e. above, Group E (claims 9, 11, 22, 29, 42 and 44) are believed clearly patentable.

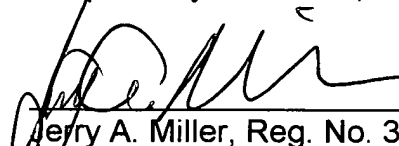
CONCLUSION

In the arguments above, Appellant has established that:

- Kleiman fails to disclose a playback credit bank and playback credits that are stored and replenished in the playback credit bank;
- The Examiner has admitted that Kleiman is deficient in disclosing a playback credit bank;
- Liu has no teaching adequate to supplement Kleiman's deficiencies in teaching or suggesting a playback credit bank - Liu only teaches parameters attached to an authentication key;
- Kleiman and Liu cannot properly be combined without either destroying the function of one or the other reference, or at minimum changing the principles of operation of one or the other references;
- The Examiner has not provided any convincing factual based evidence that would suggest that one of ordinary skill in the art would be motivated to combine Kleiman with Liu; and
- None of the cited art suggests a playback credit bank forming part of the medium storing content for playback.

In view of the above arguments, reconsideration and allowance of all claims is respectfully requested.

Respectfully submitted,



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APPENDIX - CLAIMS

1. A content player, comprising in combination:
a memory which stores content;
a playback credit bank stored in the content player;
a playback circuit which plays the content for consumption by a user, providing the credit bank contains at least one playback credit; and
a processor which deducts a playback credit from the playback credit bank when the content is played.
2. The apparatus according to claim 1, wherein the playback credit bank is replenished by accessing a removable storage medium.
3. The apparatus according to claim 1, wherein the playback credit bank is replenished by communicating with a with smart card.
4. The apparatus according to claim 1, wherein the playback credit bank is replenished by communicating with a kiosk.
5. The apparatus according to claim 1, further comprising means for advising a user of the status of credits in the credit bank.
6. The apparatus according to claim 5, wherein the means for advising comprises a display that displays a number of credits remaining in the credit bank.
7. The apparatus according to claim 5, wherein the means for advising comprises a display that displays a reminder to purchase credits.
8. The apparatus according to claim 1, further comprising a content player that reads content from the memory for playback.

9. The apparatus according to claim 8, wherein the content player comprises a stick memory device reader and wherein the memory is embodied in a stick memory device.

10. The apparatus according to claim 1, wherein the memory comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

11. The apparatus according to claim 1, wherein the content player comprises a portable music player.

12. A method of loading playback credits into an electronic content player, comprising:

- electronically linking with a playback credit vendor using a communication link;
- purchasing playback credits via the communication link;
- storing playback credits on a credit storage medium; and
- transferring the playback credits from the credit storage medium to a playback credit bank residing in the electronic content player.

13. The method according to claim 12, wherein the communication link comprises the Internet.

14. The method according to claim 12, wherein the communication link comprises a wireless communication link.

15. The method according to claim 12, wherein the credit storage medium comprises a card having a magnetic stripe.

16. The method according to claim 12, wherein the credit storage medium comprises a smart card.

17. The apparatus according to claim 12, wherein the credit storage medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

18. A method of playback of electronic media, comprising:
reading a credit bearing medium containing playback credits;
transferring playback credits from the credit bearing medium to a playback credit bank;
reading a content bearing medium;
determining if the playback credit bank has at least one credit;
if the playback credit bank has at least one credit, deducting a credit; and
if the playback credit bank has at least one credit prior to the deducting, playing back the content stored on the content bearing medium.

19. The method according to claim 18, further comprising decrypting the playback credits read from the credit bearing medium prior to storing the playback credits to the playback credit bank.

20. The method according to claim 18, further comprising providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.

21. The method according to claim 18, wherein reading the content bearing medium comprises reading a semiconductor memory device.

22. The method according to claim 21, wherein the semiconductor memory device comprises a stick memory device.

23. The method according to claim 18, wherein reading the credit bearing medium comprises reading a magnetic card stripe.

24. The method according to claim 23, wherein the card strip comprises a card stripe forming an interface to a smart card.

25. An electronic storage medium storing program instructions which, when executed on a programmed processor, carry out a process comprising:

reading a credit bearing medium containing playback credits;

transferring playback credits from the credit bearing medium to a playback credit bank;

reading a content bearing medium;

determining if the playback credit bank has at least one credit;

if the playback credit bank has at least one credit, deducting a credit; and

if the playback credit bank has at least one credit prior to the deducting, playing back the content stored on the content bearing medium.

26. The method according to claim 25, further comprising decrypting the playback credits read from the credit bearing medium prior to storing the playback credits to the playback credit bank.

27. The method according to claim 25, further comprising providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.

28. The method according to claim 25, wherein reading the content bearing medium comprises reading a semiconductor memory device.

29. The method according to claim 28, wherein the semiconductor memory device comprises a stick memory device.

30. The method according to claim 25, wherein reading the credit bearing medium comprises reading a card stripe.

31. The method according to claim 30, wherein the card strip comprises a card stripe forming an interface to a smart card.

32. The method according to claim 25, wherein the content bearing medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

33. The method according to claim 25, wherein the credit bearing medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

34. A content player, comprising in combination:
a storage medium which stores content;
a playback credit bank stored in the storage medium;
a playback circuit which plays the content for consumption by a user, providing the credit bank contains at least one playback credit; and
a processor which deducts a playback credit from the playback credit bank when the content is played.

35. The apparatus according to claim 34, wherein the playback credit bank is replenished by accessing a removable storage medium.

36. The apparatus according to claim 34, wherein the playback credit bank is replenished by communicating with a smart card.

37. The apparatus according to claim 34, wherein the playback credit bank is replenished by communicating with a kiosk.

38. The apparatus according to claim 34, further comprising means for advising a user of the status of credits in the credit bank.

39. The apparatus according to claim 38, wherein the means for advising comprises a display that displays a number of credits remaining in the credit bank.

40. The apparatus according to claim 38, wherein the means for advising comprises a display that displays a reminder to purchase credits.

41. The apparatus according to claim 34, further comprising a content player that reads content from the storage medium for playback.

42. The apparatus according to claim 41, wherein the content player comprises a stick memory device reader and wherein the memory is embodied in a stick memory device.

43. The apparatus according to claim 34, wherein the storage medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

44. The apparatus according to claim 34, wherein the content player comprises a portable music player.

45. A method of playback of electronic media, comprising:
providing a credit bearing medium embodied as a smart card having a magnetic strip used as an interface thereto;
purchasing playback credits;
encrypting the playback credits;
storing the encrypted playback credits to the credit bearing medium;
reading a credit bearing medium containing playback credits;
decrypting the playback credits read from the credit bearing medium
transferring the decrypted playback credits from the credit bearing medium to a playback credit bank;
reading a content bearing medium, the content bearing medium comprising a stick memory device;

determining if the playback credit bank has at least one credit, and if so:

determining if the content bearing medium is present, and providing a prompt to install the content bearing medium if the content bearing medium is not present, and when the content bearing medium is present:

deducting a credit; and

playing back the content stored on the content bearing medium;

providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

Inventor(s) : Jaime Siegel
Filed : 10/18/2000
Serial No. : 09/691,409
Confirmation No. : 3951
Group Art Unit : 2876
Examiner : Kim, Ahshik
Docket Number : SNY-N3422
Title : Portable Music Player with Pay Per Play Usage and Method
of Purchase of Credits for Usage

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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JERRY A. MILLER Reg. No. 30,779

(Applicant, Assignee or Reg. Representative)

Signature

Date

APPEAL BRIEF

This appeal brief is submitted in triplicate in response to the Final Office Action dated July 9, 2003, a fourth Office Action in this application. Reconsideration and allowance of all claims at issue are respectfully requested.

Serial No. 09/691,409

The fee for this brief is being paid by ☒ credit card payment form ☐ check ☐ deducted from deposit account number 501267. The Commissioner is authorized to deduct any underpayment or credit any overpayment to deposit account number 501267.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee(s) of this application - Sony Corporation and Sony Electronics, Inc.

RELATED APPEALS AND INTERFERENCES

None known to the undersigned.

STATUS OF CLAIMS

All claims (1-45) stand rejected. All claims are as originally filed except for minor amendments to remove a trademark term as required by the Examiner.

Claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are rejected under 35 U.S.C. §103(a) as unpatentable over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).

Claims 9, 11, 22, 29, 42 and 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).

STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No amendments have been filed subsequent to the Final Rejection.

SUMMARY OF INVENTION

The following summary is supplied in compliance with the requirements of 37 C.F.R §1.192. The undersigned wishes to note that this summary is provided due to the requirements of the above rule and is intended merely as an aid to the Board in rapidly

understanding certain embodiments consistent with the invention and the issues relating to this appeal. As such, this summary should not be construed to define or limit the invention in any way.

With reference to **FIGURE 1**, this invention relates, in certain embodiments, to a music player 100 which uses recorded media (e.g., 112) that is playable in a pay per play format and to a method for a user to purchase playback credits for use of the music on the player 100. When a user plays the content, playback credits are deducted from a playback credit bank 156. Upon use of all of the available credits, the user is unable to continue to play the content.

Player 100 includes, in this embodiment, a media player 106 which can be any suitable media player including a disc drive, tape drive, flash memory card or Memory Stick™ (Sony Corporation, Tokyo, Japan) reader. In this example, a Memory Stick™ 112 is shown as the content bearing medium which contains, for example, digital formatted music program material. Media player 106 includes all of the conventional circuitry used to effect playback of the program material in the media 112 and reproduction thereof over the headphones 120.

Player 100 also may include a media reader such as a swipe card reader 128 suitable for reading from and writing to a card similar to a credit card or smart card 134 via a magnetic stripe 136 or other interface. In this embodiment, the smart card 134 is programmed with a number of encrypted playback credits which are purchased by the user, for example, by mail, Internet, kiosk or other retail outlets. In this embodiment, the smart card may be purchased with playback credits, e.g. 100 playback credits. When the user purchases the playback credits on the smart card 134, he or she swipes the card through swipe card reader 128 to read the content of the smart card 134, decrypt the content in a processor 144 having a decryption engine, deleting or deducting the playback credits from the smart card 134 and storing those playback credits internally in the player 100's playback credit bank 156. Thus, in this example, after swiping the smart card 134 through the swipe card reader 128, the

playback credit bank 156 is credited with the 100 playback credits previously stored thereon, so that the playback credit bank 156 now has 100 playback credits plus any playback credits already stored in the playback credit bank 156.

In other embodiments, the playback credit bank 156 can be replenished from any number of sources. For example, the same player which plays content may be employed to read the playback credits from playback credit bearing media instead of, or in addition to, content that might or might not be stored on the playback credit media. In other embodiments, the player 100 could be directly interfaced to either a point of sale terminal such as a kiosk or a computer connected to the Internet or to a wireless communication mechanism so that the playback credit bank can be directly replenished.

In operation, once the playback credits are stored in the playback credit bank 156 and content bearing media 112 is accessed by the media player 106, the processor 144 checks the playback credit bank 156 prior to enabling playback of the media's content. If playback credits are available, one is deducted or disabled and playback is permitted. In one embodiment, the playback credit is deducted at approximately the time when playback begins. In other embodiments, the playback credit can be deducted only after, for example, ten seconds or 30 seconds of playback have been provided (e.g. as a free preview). In some embodiments, a mechanism such as display 160 is provided and the programming generates a reminder as to the status of the playback credit bank 156 or otherwise provides a reminder to the user to renew playback credits. This can be accomplished, for example, by providing a visual or audible message to the user indicating the number of playback credits remaining and/or a need to obtain new playback credits.

In another embodiment, the content bearing media 112 can also serve as the storage mechanism for the playback credit bank. In this embodiment, the content and playback credits are associated with the media rather than the player 100 permitting the media to be used for its available playback credits in any suitable player 100 including multiple such players.

One non-limiting reading of claim 1 on **FIGURE 1**, presented by way of example for the convenience of the Board, is as follows:

A content player 100, comprising in combination:

- a memory 112 which stores content;
- a playback credit bank 156 stored in the content player 100;
- a playback circuit 106 which plays the content for consumption by a user, providing the credit bank 156 contains at least one playback credit; and
- a processor 144 which deducts a playback credit from the playback credit bank 156 when the content is played.

ISSUES ON APPEAL

1. Whether or not claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are patentable under 35 U.S.C. §103(a) over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).
 - a. Whether or not Kleiman has a playback credit bank within the meaning of Appellant's Application and whether or not Kleiman deducts a playback credit when content is played.
 - b. Has the Examiner admitted that Kleiman does not in fact have a playback credit bank within the meaning of Appellant's Application.
 - c. Does Liu supply the missing playback credit bank within the meaning of Appellant's application.
 - d. Whether or not Kleiman is properly combinable with Liu in support of an obviousness rejection since making such a combination defeats the intended function of either Kleiman or Liu.
 - e. Whether or not the Examiner has met the burden of establishing that there is a suggestion in the art to properly combine Kleiman with Liu in support of an obviousness rejection.

2. Whether or not claims 9, 11, 22, 29, 42 and 44 are unpatentable under 35 U.S.C. §103(a) over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).

GROUPING OF CLAIMS

Appellant considers the following groups of claims separately patentable, and these groups stand or fall as groups:

Group A - Claims 1, 5-8, 10, 12-14, 17-21, 25-28, 32 and 33.

Group B - Claims 2, 3, 15, 16, 23, 24, 30, 31, 35 and 36.

Group C - Claims 4 and 37.

Group D - Claims 34, 37-41, 43 and 45.

Group E - Claims 9, 11, 22, 29, 42 and 44.

ARGUMENTS

1. **Claims 1-8, 10, 12-21, 23-28, 30-41, 43 and 45 are patentable over Kleiman (US 5,959,945) in view of Liu (US 5,953,005).**

- a. Kleiman has no playback credit bank within the meaning of Appellant's Application, and Kleiman does not deduct a playback credit when content is played.

The Office Action dated 10/24/2002 asserted (page 2, last paragraph) that Kleiman has a playback credit bank 212. This assertion is repeated in the Office Action dated 2/4/2003 (page 2, last paragraph) as well as the current Office Action (page 2, last paragraph).

The response filed on 1/16/2003 explained (pages 2 through 4) using extensive quotes from the Kleiman's specification that Kleiman's monetary credits are deducted in order to decrypt and re-encrypt Kleiman's VET (Virtual Electronic Title) envelopes. In contrast, Appellant's playback credit bank deducts a playback credit when content is played. Accordingly, there is no disclosure in Kleiman that teaches or suggests a playback credit bank within the meaning of Appellant's application. MPEP 2141.02 requires that the invention as a whole must be properly considered in order to establish *prima facie* obviousness. Such an inquiry requires proper consideration of all elements of the claims as required by MPEP 2142.03.

- b. The Examiner has admitted that Kleiman does not in fact have a playback credit bank within the meaning of Appellant's Application.

In the Office Action dated 2/14/2003 (page 3, third paragraph), the Examiner states:

"Kleiman fails to specifically teach or fairly suggest of charging a customer when the electronic content is repeatedly played."

In the same Office Action (page 5, section 4), the Examiner states:

"the Applicant provided distinction between VET and VET envelope as disclosed in the reference to Kleiman ... Applicant's request for reconsideration based on reasons in remarks section is persuasive. In light of Applicant's reasons and interpretation of Kleiman reference, additional search was warranted."

The above statement regarding the failure of the Kleiman reference is repeated in the Office Action of 2/14/2003 (page 3, second paragraph) as well as the current Office Action (page 3, second paragraph).

Thus, it has not only been established as argued in section a. above that Kleiman has no playback credit bank and does not deduct a credit when content is

played as called for in the claims, but additionally, the Examiner admits and reiterates that this is the case. It is clearly the case that Kleiman does not meet these claim features, despite continued statements that Kleiman teaches a playback credit bank (section 2, second paragraph). It is believed that the Examiner's continued reference to Kleiman having a playback credit bank 212 is an inadvertent word processing error in view of the contradictory position argued in the later Office Actions.

- c. Liu does not supply the missing playback credit bank within the meaning of Appellant's application.

The Examiner attempts to supply the missing teaching of Kleiman using the Liu reference and states (page 3, third and fourth paragraphs):

"Liu teaches a method and system for accessing electronic content ... wherein provided authentication key expires after some period of time ... so that the customer may not be able to enjoy the content repeatedly without paying."
(emphasis added)

The Examiner further states (page 5, next to last paragraph):

"Liu reference is cited to cure the deficiency of Kleiman reference, use of credit-bank feature wherein the customer pays every time the content is played. Since Liu's key (or means enabling users to play the content) is provided with time limitation such playing key is valid only for a time or number of plays, ... it could be inferred that the users have to pay for additional plays."

It is respectfully submitted that the Examiner's analysis fails to consider the teaching at column 5, lines 33+ that one could potentially enjoy the content repeatedly within the period of time in which the authentication key is valid. While Liu does in fact disclose that *"the key may expire after a predetermined number of plays"*, Liu does not disclose that such number of plays is controlled in a playback credit bank in which a

playback credit is deducted each time the content is played. In Liu, playback is controlled by setting parameters for the expiration of a decryption key. While the effect from the user's perspective may be similar, the fact remains that neither Liu nor Kleiman disclose or suggest the mechanism used to effect the pay-per-play function of certain embodiments of Applicant's invention.

From the above, it would appear that the Examiner may have applied an impermissible "obvious to try" standard. It has long been established that one cannot base obviousness upon what a person skilled in the art might try or might find obvious to try, but rather must consider what the prior art would have led a person of ordinary skill in the art to do. (See for example, *In re Tomlinson*, 150 USPQ 623 (CCPA 1996) and *In re Goodwin*, 198 USPQ 1 (CCPA 1978)). By way of analogy, the existence of aspirin as a pain reliever may demonstrate the desirability for pain relief compounds, it in no way renders ibuprofen and codeine and morphine obvious.

While it is asserted that the Liu reference cures Kleiman's deficiency, it in fact does not - Liu contains no playback credit bank within the meaning of Appellant's application. As the Examiner himself stated, the Liu reference only describes use of an authentication key that expires after a period of time or number of plays. Thus, the key has constraints that enable control of playback, but there is no playback credit bank. The claim limitations must be considered in order to make a proper case of *prima facie* obviousness.

Thus, Liu fails to teach or suggest a playback credit bank in which a playback credit is deducted when content is played within the meaning of Appellant's application. MPEP 2141.02 requires that the invention as a whole must be properly considered in order to establish *prima facie* obviousness. MPEP 2141.03 requires that such an inquiry properly consider all elements of the claims.

After a discussion of Liu (page 3, fourth paragraph), the Examiner appears to somehow invoke an assertion of official notice (without actually stating so) to support

an assertion that “*pay-per-view or pay-per-play is well known in the art and widely used in various industries.*” While only Liu is advanced as evidence to support this assertion, it remains the case neither Liu nor any assertion of official notice makes reference to the playback credit bank and operation thereof as recited in the claims. While there may be functional similarities from a user point of view, the fact remains that the Examiner has failed to establish *prima facie* obviousness for failure to properly consider each and every claim limitation in an analysis of the claims as a whole since the playback credit bank and operation thereof are neither taught nor suggested nor even asserted to be known on the basis of official notice.

- d. Kleiman is not properly combinable with Liu in support of an obviousness rejection since making such a combination defeats the intended function of either Kleiman or Liu.

As explained in the Office Action Response dated May 3, 2003 (page 2 last paragraph through page 3 last full paragraph), if Kleiman and Liu are combined as suggested by the Office Action, the undersigned is unable to resolve what the resulting structure would be, why one would make the combination and how it would function. Consider the following:

- In Kleiman, as described in column 13, the VET envelope is decrypted at the player using a VET key. The VET is encrypted using a hardware dependent key (the internal IT key). The re-encryption action triggers deducting a credit in Kleiman. In Kleiman, the hardware specific key is used to internally encrypt and decrypt the content (the VET) so that playback is only possible on a single device. Apparently, multiple playbacks are contemplated for a single credit.
- In Liu, a key is provided to a user after authentication. That key can be a one time use key, or that the key may be good for a certain number of plays

or for a certain time period. Such a key is used to decrypt the data for one song (see col. 5, lines 44-49).

Thus, while Kleiman uses hardware specific encryption to protect the content, Liu uses a downloaded key that can presumably be associated with an allowable number of plays. How then shall the two references be combined (and what suggestion is there to combine them in this way)? If Lui's encryption keys are used, it would appear that the advantage and function of Kleiman's hardware specific encryption is destroyed. If the Examiner is proposing that both encryption schemes should be used simultaneously, where is the suggestion for such redundancy, since Kleiman already has a secure encryption system?

Thus, it must be concluded that either the function of Kleiman's hardware specific encryption is destroyed by the combination, or the combination produces redundant encryption for which there is no apparent need and thus no motivation in the art to provide.

MPEP 2143.01 provides that one cannot establish prima facie obviousness if a proposed combination or modification destroys the function of one of the references being combined, or if the proposed modification changes the principles of operation of the cited reference. Accordingly, the current combination cannot be used to establish prima facie obviousness since the function of Kleiman's hardware specific encryption would be destroyed, or at best the principles of operation of Kleiman are changed.

- e. The Examiner has not met the burden of establishing that there is a suggestion in the art to properly combine Kleiman with Liu in support of an obviousness rejection, and even if such suggestion exists, the combination is inadequate to meet all claim limitations.

MPEP 2143.01 requires that the prior art suggest the desirability of the claimed invention. In view of the above, it is clear that the undersigned can find no motivation

or suggestion to make the proposed combination. The Examiner apparently justifies the combination of Kleiman with Liu by the third full paragraph of page 3 of the Office Action which states:

“Some customers may want to purchase contents temporarily, and some others buy them permanently and keep them for further enjoyment. ... Accordingly, incorporating various marketing alternative would have been obvious to one ordinary skill in the art to increase sales/revenue and expand customer base, and therefore, an obvious expedient.”

It is respectfully submitted that incorporating various marketing alternatives to increase sales/revenue and expand a customer base cannot possibly be an adequate reason for combination of references. One or more of the above is the desire of virtually every inventor, but such desires cannot possibly lead to a reason for combining references in a patentability analysis. To permit such a reasoning to stand flies in the face of MPEP 2143.01 and the underlying case law that provides the basis thereto. Again, it appears that at best the Examiner has applied an improper “obvious to try” analysis.

In the first full paragraph of page 4 of the Office Action, the Examiner further states:

“It would have been obvious to one of ordinary skill in the art to provide such a combination, as it would reduce the number of storage mediums necessary to fully operate the content player. The user could conveniently perform all operational tasks using one card ... , adding to the customer satisfaction.”

While Appellant appreciates the Examiner’s endorsement of the advantages of certain embodiments of the present invention, it is respectfully submitted that they are just that - advantages that a user might obtain with certain embodiments consistent with the invention. However, it is respectfully submitted that the fact that the Examiner

can point to advantages does not render them obvious nor provide basis for a combination of references. Such suggestion to make a combination must come from the art and not the invention. To suggest otherwise, is an improper hindsight reconstruction.

In short, the Examiner has used a hindsight analysis of advantages of certain embodiments of the invention to justify combination of references without any clear suggestion or teaching in the art to back up such a combination. (It could be argued that such advantages support a position of patentability rather than vice versa.) MPEP 2143.01 clearly requires that the suggestion or teaching come either explicitly or implicitly from the art or the knowledge of those of ordinary skill in the art. Bare allegations that the references can be combined to provide certain advantages does not meet this requirement. As stated in MPEP 2142, the Examiner bears the initial burden of factually supporting any conclusion of *prima facie* obviousness. Establishing facts that support the propriety of making the proposed combination is a necessary part of meeting such burden. Thus far, the Examiner has not met this burden.

DISCUSSION OF SPECIFIC CLAIM GROUPS:

For the above reasons stated in sections a. through e., the claims of Group A (claims 1, 5-8, 10, 18-21, 25-28, 32, 33) are believed to be clearly patentable.

Regarding Group B (claims 2, 3, 15, 16, 23, 24, 30, 31, 35, 36), each of these claims are believed independently patentable and call for a playback credit bank that is replenished with playback credits by access to a removable storage medium or by communication with a smart card. None of the cited references appear to disclose, teach or suggest this feature. While Kleinman does disclose credits that are purchased possibly through a smart card, such credits are not playback credits. Thus, for all of the reasons cited above in sections a. through e., as well as the lack of teaching of purchase of playback credits using removable storage or smart cards, these claims are independently patentable.

Regarding Group C (claims 4, 37), these claims provide for playback credits to be obtained from a kiosk. The Examiner asserts that this is equivalent to credits that are transferred in the form of certificates from service centers, and that such service centers encompass the realm of kiosks (page 3, first paragraph). Again, Kleinman's credits are certificates and are not playback credits that are used in a playback credit bank. Thus, for all of the reasons cited in sections a. through e., as well as the lack of teaching of purchase of playback credits via a kiosk, the claims of Group C are believed independently patentable.

Regarding Group D (claims 34, 37-41, 43, 45), these claims call for the credit bank to be situated within the storage medium that also stores the content. Thus, by way of example, when a user purchases a Compact Disc, it might come with a fixed number of playback credits stored on the Compact Disc (e.g., 10 plays). If the user wishes to play the content more times, additional playback credits may be purchased for that specific content and stored with the content on the Compact Disc.

The Office Action (page 4, second paragraph) admits that the teaching of this feature is absent in Kleiman, and merely asserts that it is obvious and again cites several advantages of certain embodiments. Again, it is submitted that this represents a hindsight reconstruction and provides no showing of a motivation in the art to make the proposed combination or modification (MPEP 2143.01).

As described above, none of the cited art discloses or suggests a playback credit bank that stores playback credits. Additionally, none of the cited art situates such a playback credit bank on the medium storing the content for which the credits are applied for playback. Thus, for all of the above reasons stated in sections a. through e., as well as the claims of Group D are believed clearly patentable.

2. **Claims 9, 11, 22, 29, 42 and 44 are patentable over Kleiman as modified by Liu and further in view of Abecassis (US 6,192,340).**

For all of the same reasons explained in sections a. through e. above, Group E (claims 9, 11, 22, 29, 42 and 44) are believed clearly patentable.

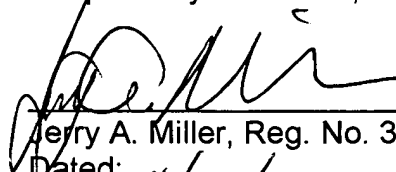
CONCLUSION

In the arguments above, Appellant has established that:

- Kleiman fails to disclose a playback credit bank and playback credits that are stored and replenished in the playback credit bank;
- The Examiner has admitted that Kleiman is deficient in disclosing a playback credit bank;
- Liu has no teaching adequate to supplement Kleiman's deficiencies in teaching or suggesting a playback credit bank - Liu only teaches parameters attached to an authentication key;
- Kleiman and Liu cannot properly be combined without either destroying the function of one or the other reference, or at minimum changing the principles of operation of one or the other references;
- The Examiner has not provided any convincing factual based evidence that would suggest that one of ordinary skill in the art would be motivated to combine Kleiman with Liu; and
- None of the cited art suggests a playback credit bank forming part of the medium storing content for playback.

In view of the above arguments, reconsideration and allowance of all claims is respectfully requested.

Respectfully submitted,


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APPENDIX - CLAIMS

1. A content player, comprising in combination:
a memory which stores content;
a playback credit bank stored in the content player;
a playback circuit which plays the content for consumption by a user, providing the credit bank contains at least one playback credit; and
a processor which deducts a playback credit from the playback credit bank when the content is played.
2. The apparatus according to claim 1, wherein the playback credit bank is replenished by accessing a removable storage medium.
3. The apparatus according to claim 1, wherein the playback credit bank is replenished by communicating with a with smart card.
4. The apparatus according to claim 1, wherein the playback credit bank is replenished by communicating with a kiosk.
5. The apparatus according to claim 1, further comprising means for advising a user of the status of credits in the credit bank.
6. The apparatus according to claim 5, wherein the means for advising comprises a display that displays a number of credits remaining in the credit bank.
7. The apparatus according to claim 5, wherein the means for advising comprises a display that displays a reminder to purchase credits.
8. The apparatus according to claim 1, further comprising a content player that reads content from the memory for playback.

9. The apparatus according to claim 8, wherein the content player comprises a stick memory device reader and wherein the memory is embodied in a stick memory device.
10. The apparatus according to claim 1, wherein the memory comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.
11. The apparatus according to claim 1, wherein the content player comprises a portable music player.
12. A method of loading playback credits into an electronic content player, comprising:
electronically linking with a playback credit vendor using a communication link;
purchasing playback credits via the communication link;
storing playback credits on a credit storage medium; and
transferring the playback credits from the credit storage medium to a playback credit bank residing in the electronic content player.
13. The method according to claim 12, wherein the communication link comprises the Internet.
14. The method according to claim 12, wherein the communication link comprises a wireless communication link.
15. The method according to claim 12, wherein the credit storage medium comprises a card having a magnetic stripe.
16. The method according to claim 12, wherein the credit storage medium comprises a smart card.

17. The apparatus according to claim 12, wherein the credit storage medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

18. A method of playback of electronic media, comprising:
reading a credit bearing medium containing playback credits;
transferring playback credits from the credit bearing medium to a playback credit bank;
reading a content bearing medium;
determining if the playback credit bank has at least one credit;
if the playback credit bank has at least one credit, deducting a credit; and
if the playback credit bank has at least one credit prior to the deducting, playing back the content stored on the content bearing medium.

19. The method according to claim 18, further comprising decrypting the playback credits read from the credit bearing medium prior to storing the playback credits to the playback credit bank.

20. The method according to claim 18, further comprising providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.

21. The method according to claim 18, wherein reading the content bearing medium comprises reading a semiconductor memory device.

22. The method according to claim 21, wherein the semiconductor memory device comprises a stick memory device.

23. The method according to claim 18, wherein reading the credit bearing medium comprises reading a magnetic card stripe.

24. The method according to claim 23, wherein the card strip comprises a card stripe forming an interface to a smart card.

25. An electronic storage medium storing program instructions which, when executed on a programmed processor, carry out a process comprising:

- reading a credit bearing medium containing playback credits;
- transferring playback credits from the credit bearing medium to a playback credit bank;
- reading a content bearing medium;
- determining if the playback credit bank has at least one credit;
- if the playback credit bank has at least one credit, deducting a credit; and
- if the playback credit bank has at least one credit prior to the deducting, playing back the content stored on the content bearing medium.

26. The method according to claim 25, further comprising decrypting the playback credits read from the credit bearing medium prior to storing the playback credits to the playback credit bank.

27. The method according to claim 25, further comprising providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.

28. The method according to claim 25, wherein reading the content bearing medium comprises reading a semiconductor memory device.

29. The method according to claim 28, wherein the semiconductor memory device comprises a stick memory device.

30. The method according to claim 25, wherein reading the credit bearing medium comprises reading a card stripe.

31. The method according to claim 30, wherein the card strip comprises a card stripe forming an interface to a smart card.
32. The method according to claim 25, wherein the content bearing medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.
33. The method according to claim 25, wherein the credit bearing medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.
34. A content player, comprising in combination:
a storage medium which stores content;
a playback credit bank stored in the storage medium;
a playback circuit which plays the content for consumption by a user, providing the credit bank contains at least one playback credit; and
a processor which deducts a playback credit from the playback credit bank when the content is played.
35. The apparatus according to claim 34, wherein the playback credit bank is replenished by accessing a removable storage medium.
36. The apparatus according to claim 34, wherein the playback credit bank is replenished by communicating with a with smart card.
37. The apparatus according to claim 34, wherein the playback credit bank is replenished by communicating with a kiosk.
38. The apparatus according to claim 34, further comprising means for advising a user of the status of credits in the credit bank.

39. The apparatus according to claim 38, wherein the means for advising comprises a display that displays a number of credits remaining in the credit bank.

40. The apparatus according to claim 38, wherein the means for advising comprises a display that displays a reminder to purchase credits.

41. The apparatus according to claim 34, further comprising a content player that reads content from the storage medium for playback.

42. The apparatus according to claim 41, wherein the content player comprises a stick memory device reader and wherein the memory is embodied in a stick memory device.

43. The apparatus according to claim 34, wherein the storage medium comprises a storage medium selected from magnetic tape, magnetic disc, optical disc, magneto-optical storage and semiconductor memory.

44. The apparatus according to claim 34, wherein the content player comprises a portable music player.

45. A method of playback of electronic media, comprising:
providing a credit bearing medium embodied as a smart card having a magnetic strip used as an interface thereto;
purchasing playback credits;
encrypting the playback credits;
storing the encrypted playback credits to the credit bearing medium;
reading a credit bearing medium containing playback credits;
decrypting the playback credits read from the credit bearing medium
transferring the decrypted playback credits from the credit bearing medium to a playback credit bank;
reading a content bearing medium, the content bearing medium comprising a stick memory device;

determining if the playback credit bank has at least one credit, and if so:
 determining if the content bearing medium is present, and providing a prompt to install the content bearing medium if the content bearing medium is not present, and when the content bearing medium is present:
 deducting a credit; and
 playing back the content stored on the content bearing medium;
providing a message advising of the lack of playback credits in the event the credit bank does not have at least one playback credit.